

Before the
Federal Communications Commission
Washington, D.C. 20554

APR 20 2004

In the Matter of)	
)	
Local Telephone Competition and Broadband Reporting)	WC Docket No 04-141
)	
Local Competition and Broadband Reporting)	CC Docket No <u>99-301</u>
)	

**NOTICE OF PROPOSED RULEMAKING AND
ORDER ON RECONSIDERATION**

Adopted: March 31, 2004

Released: April 16, 2004

Comment Date: 30 days from publication in the Federal Register
Reply Comment Date: 60 days from publication in the Federal Register

By the Commission. Commissioners Copps and Adelstein issuing separate statements

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (Notice), we seek comment about specific proposals to improve our Form 477 local competition and broadband data gathering program,¹ including gathering more granular data from broadband service providers and extending the program for five years beyond its currently designated sunset in March 2005.² The information collected in this program helps the Commission and the public understand the extent of local telephone competition and broadband deployment, which is important to the nation's economic, educational, and social well-being. The proposals on which we seek comment here attempt to further that goal while minimizing burdens on marketplace competitors and innovators.

II. BACKGROUND

2. The *Data Gathering Order* established a reporting program (using the FCC Form 477) to collect basic information about two critical areas of the communications industry: the deployment of broadband services and the development of local telephone service competition.³ The Commission concluded that collecting this information would materially improve its ability to develop, evaluate, and revise policy in these rapidly changing areas and provide valuable benchmarks for Congress, the Commission, other policy makers, and consumers.⁴ Since adoption of the Form 477 in spring 2000, broadband service providers and local telephone service providers have reported data nine times,⁵ and we have issued regular reports based in significant part on this information.⁶ In the

¹ *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717 (2000) (*Data Gathering Order*).

² Nine months after it adopted the current data collection requirements, the Commission issued a Second Notice of Proposed Rulemaking to consider expanding the data gathering program. *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Second Notice of Proposed Rulemaking, 16 FCC Rcd 2072 (2001) (*Second Notice*). Thirty parties filed comments in that proceeding. Most opposed expanding the program, while at least two argued that it was premature for the Commission to propose modifications to a program that had been implemented less than a year before the Second Notice appeared. See Verizon Comments at 2; National Cable Television Association Comments at 13. Since then, the Commission and the public have had almost four years' experience with the Form 477 program. Based on that experience, we have decided to issue a new Notice that considers significantly revised modifications to the Form 477. As a result, we terminate further consideration of the *Second Notice* and its docket. Parties that previously participated in CC Docket No. 99-301 are free to resubmit any comments they believe are still relevant in the new docket we open today.

³ In this Notice we use the term "broadband services" to refer to those services that deliver an information carrying capacity in excess of 200 kbps in at least one direction. These services have also been described as "high-speed services" in Commission reports issued pursuant to section 706 of the Telecommunications Act of 1996. 47 U.S.C. § 157 nt.

⁴ *Data Gathering Order*, 15 FCC Rcd at 7724, paras. 11 *et seq.*

⁵ Broadband and local service providers filed Form 477 data for the first time on May 15, 2000, reporting lines in service as of December 31, 1999; they filed the second set of data, reporting lines in service as of June 30, 2000, on September 1, 2000. Thereafter, providers have filed year-end data each March 1 and mid-year data each September 1.

⁶ See, e.g., *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Third Report, 17 FCC Rcd 2844 (2002) (*Third Report* (continued)).

Data Gathering Order, the Commission adopted a sunset provision pursuant to which the collection program will terminate after five years (*i.e.*, March 2005) unless the Commission acts to extend it.⁷

3 Form 477 includes separate sections on broadband deployment, local telephone service competition,⁸ and mobile telephone service provision.⁹ Entities are required to report only when they meet or exceed defined reporting thresholds and, then, are only required to complete those portions of the form for which they meet or exceed the reporting thresholds.¹⁰ Entities that meet a threshold file data on a state-by-state basis.¹¹ Facilities-based providers of broadband connections and local exchange carriers (LECs) also report a list of Zip Codes in which they serve end users, for each state for which they complete a form. In the case of broadband connections, reporting entities include incumbent and competitive LECs, cable companies, operators of terrestrial and satellite wireless facilities, municipalities, and any other facilities-based provider of broadband connections to end users.¹²

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on *Advanced Telecommunications Capability*). Based upon the Form 477 data collection, the Commission issues two semiannual statistical reports – the Local Telephone Competition report and the High-Speed Services for Internet Access report. Both reports are available at <http://www.fcc.gov/wcb/jatd/comp.html>.

⁷ *Data Gathering Order*, 15 FCC Rcd at 7764, para. 104

⁸ For purposes of this proceeding, we use the terms “local telephone service,” “local telecommunications service,” and “local exchange and exchange access services” to refer collectively to the services that are subject to the local competition reporting requirements identified in this Notice. These internal references are not meant to affect or modify any existing definitions of similar terms, such as “telephone exchange service,” “exchange access,” and “telecommunications service” as set forth in the Act and our prior orders. *See, e.g.*, 47 U.S.C. §§ 153(16), (46), (47), *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501 (1998).

⁹ For purposes of this proceeding, the term “mobile telephone service” has the same meaning as used in the *Data Gathering Order*. *See Data Gathering Order*, 15 FCC Rcd at 7735-36, para. 32 (noting that the mobile telephony market generally includes providers of cellular, broadband personal communications service (PCS), and specialized mobile radio services that offer real-time, two-way switched voice service that is interconnected with the public switched network utilizing an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless handoffs of subscriber calls). *See also* 47 C.F.R. § 20.15(b)(1). While only facilities-based mobile telephone service providers complete the current Form 477, those filers report the total number of voice telephone service subscribers served over their systems, whether served directly or via resale by an unaffiliated entity. *See Data Gathering Order*, 15 FCC Rcd at 7756-57, para. 84.

¹⁰ For the current Form 477, the state-specific reporting threshold for Part I (Broadband) is 250 or more facilities-based high-speed lines (or wireless channels) connecting end users to the Internet. The threshold for Part II (Wireline and Fixed Wireless Local Telephone) is 10,000 or more voice-grade equivalent lines (or wireless channels) that provide voice telephone service to end users either directly or via resale to unaffiliated telecommunications carriers. The threshold for Part III (Mobile Local Telephone) is 10,000 or more mobile telephone service subscribers that are served over the filer’s facilities, including subscribers billed directly by the filer, pre-paid subscribers, and subscribers billed by a service reseller.

¹¹ Section 3(40) of the Communications Act defines “state” to include the District of Columbia and the U.S. territories and possessions. 47 U.S.C. § 153(40).

¹² *See* 47 C.F.R. §§ 1.7001(b), 43.11(a). In the Form 477 data collection program, the facilities-based provider of the broadband line (or wireless channel) that connects to the end-user premises reports that connection irrespective of whether the end user of the retail services delivered over that connection is billed by the filer (including affiliates), by an agent of the filer, or by an unaffiliated entity. An entity is considered to be a facilities-based broadband (continued .)

III. NOTICE OF PROPOSED RULEMAKING

A. Improving the Form 477 Program

4 The Commission's reports have demonstrated steady progress in the development of local telephone service competition as well as nationwide broadband deployment. As collected and reported to date, Form 477 data show that local telephone service from competitive LECs is available in all 50 states, the District of Columbia, and Puerto Rico.¹³ The data show that broadband service is available in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.¹⁴ In section 706 reports, the Commission has concluded that broadband is being deployed in a reasonable and timely fashion. The Commission has also recognized that there are certain areas where additional information would be extremely useful in identifying and tracking developments, including rural areas. For example, the Commission has observed that, because entities currently are exempted from reporting broadband data if they have fewer than 250 high-speed lines or wireless channels connecting end users in a state to the Internet, Form 477 data filings provide little information about smaller entities operating in sparsely populated areas.¹⁵ Similarly, the Commission has observed that Zip Code data as reported in the current version of the Form 477 do not allow us to determine whether, for example, a Zip Code is listed because one business end user is connected to the Internet via a T1 facility (1.544 mbps) or whether broadband service is more widely available to residential users.¹⁶

5 More generally, we have observed, in recent years, the emergence of competing platforms to deliver high-speed services, increasing data speeds of services offered, and a steady improvement in mass-market acceptance of services. These developments suggest that refining our reporting requirements for broadband providers would yield useful information to inform policymaking in this important, rapidly changing area.

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provider if it provides broadband services over facilities that it owns or obtains from another entity and provisions/equips as broadband

¹³ Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Local Telephone Competition Status as of June 30, 2003, at Table 12 (December 2003) (*Local Telephone Competition Report*). Moreover, the number of end-user switched access lines reported by competitive LECs (CLECs) more than tripled between December 1999 and June 2003, from 8.2 million to 26.9 million lines, and the CLEC share of total switched access lines increased from 4.3 percent to 14.7 percent. *Id.*, at Table 1. The data also show that mobile telephone service is available in all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. *Id.*, at Table 13.

¹⁴ Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, High-Speed Services for Internet Access Status as of June 30, 2003, at Table 6 (December 2003) (*High-Speed Services Report*).

¹⁵ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Second Report, 15 FCC Rcd 20913, 20939-40, para. 62 n 89, 21012, para. 268 (2000) (*Second Report on Advanced Telecommunications Capability*), *Third Report on Advanced Telecommunications Capability*, 17 FCC Rcd at 2854-55, para. 17 n 46, 2908-09, para. 169.

¹⁶ See *Second Report on Advanced Telecommunications Capability*, 15 FCC Rcd at 20944-45, para. 78; *Third Report on Advanced Telecommunications Capability*, 17 FCC Rcd at 2857, para. 25.

6. We propose extending the Form 477 program for five years beyond the current scheduled sunset to support our study of broadband deployment pursuant to section 706 of the 1996 Act. We believe that our efforts to assess broadband availability have been substantially aided by analysis of the data collected by the Form 477 to date. We note, however, that we and reporting entities have now had four years' experience with the Form 477 program. Based on our experience with the Form 477 program to date, we propose to expand the program's scope to capture some additional data that could allow us to more precisely analyze availability (*i.e.*, beyond the subscribership proxy utilized by the current version of the Form 477). We propose to implement the modified reporting requirements with the filing of December 31, 2004 data on March 1, 2005, subject to OMB approval of the revised form. Our proposed broadband reporting revisions, set out in the attached draft Form 477,¹⁷ include: more detailed reporting about the deployment of technologies to serve mass-market broadband end users, particularly cable modem and DSL connections; more detailed tracking, over time, of marketplace adoption of increasingly fast broadband connections; and more detailed tracking of marketplace adoption of new broadband technologies. We seek comment on the potential benefits and burden of these revisions.

7. With respect particularly to the proposed categorization of broadband connections by technology and by information transfer rates set out in Appendix B, we seek comment on the appropriateness of the proposed categories from technical and marketplace perspectives. We also seek specific comment on whether we should modify our reporting instructions to require filers to categorize broadband connections according to the information transfer rates actually observed by end users and what operational issues, if any, this would pose.¹⁸ Ideally, providers would accurately inform consumers about the range of broadband service options available in the marketplace, including actual service "speeds," and our information collection similarly would track actual provision of particular speeds in the marketplace. Are there any existing, administratively workable industry standards or practices for measuring typical or actual speeds delivered to end users (as opposed to peak or optimum speeds)? Is there an administratively feasible way to have broadband providers measure and report speeds that are achieved on facilities within those providers' control – specifically, from the end user premises to the edge of the provider's network? What would be the pros and cons of modifying our reporting requirements to require the provision of such information?

8. We also believe that it is important to continue to monitor local service competition developments, particularly following the recent conclusion of our section 271 proceedings allowing the Bell Operating Companies (BOCs) full entry into all domestic long distance markets.¹⁹ We propose to extend the Form 477 program to collect wireline and mobile local telephone data for five years beyond the currently-scheduled sunset in March 2005. While we believe that the amount and quality of local telephone competition data currently collected by the Form 477 are generally adequate for monitoring

¹⁷ See Appendix B. For comparison, the Form 477 that qualifying filers now submit, and reporting instructions for it, may be downloaded from <http://www.fcc.gov/formpage.html>

¹⁸ Currently, Form 477 reporting instructions direct filers to consider the end user's authorized maximum usage on that connection when categorizing connections by "speed."

¹⁹ The Bell Operating Companies (BOCs) were required to demonstrate compliance with certain market-opening requirements contained in section 271 of the Communications Act of 1934, as amended, before providing in-region, interLATA services. 47 U.S.C. § 271.

local service competition developments, we note that consumers increasingly can choose among telephone service offerings that permit both local and long distance calling, often for a single price. We therefore propose, as set out in the attached draft Form 477,²⁰ to require carriers to report the extent to which they are also the end user's default interstate long distance carrier. We seek comment on the benefits and burdens of these proposed modifications. We also seek comment on whether clarification of current requirements, as also set out in the attached draft Form 477, is needed to assist filers in completing these parts of the form. We also welcome comments addressing any and all aspects of the local telephone parts of Form 477, including substantive provisions.

B. Other Issues

9. In addition to seeking comment on changes to Form 477 as set out in Appendix B, we invite comment on several other issues. First, we seek comment on whether we should require filers to specify the number of high-speed connections, by technology, in particular Zip Codes. We also seek comment on whether we should require filers to report, for each Zip Code, the number of connections provided in various "speed tiers," and whether that information should be reported separately by technology.²¹ This information – alone and in combination with Census data – would better enable us to track the marketplace acceptance of broadband. It would add yet more detail to the picture of competition between established providers of cable modem and DSL-based services, and emerging providers. Commenters should specifically address whether the benefits that would come from this reporting requirement would outweigh the additional costs that may be imposed on carriers. We also invite comments that discuss, with specificity, ways in which we could more closely align our broadband reporting methodology with the ways facilities-based broadband providers typically measure availability for the financial community and internal purposes, and thereby obtain a more detailed picture of competitive broadband deployment and service availability.

10. Second, we seek comment on whether eliminating or lowering the reporting threshold for broadband data (i.e., at least 250 high-speed lines (or wireless channels) in a state connecting end users to the Internet) would yield significantly improved data about broadband development, particularly in rural areas. Commenters that support lowering the threshold should specify what the threshold should be. We believe that the current data collection misses several hundred small facilities-based providers, e.g., rural incumbent LECs, wireless Internet service providers, and municipalities.²² Also, we note that

²⁰ See Appendix B

²¹ See ¶7, *supra*

²² For instance, rural LECs with less than 4,000 access lines that have broadband penetration rates similar to larger LECs would likely fall below our current reporting threshold. We also note that of the 13 wireless ISPs whose names appear on the Agenda for the Commission's Rural Wireless ISP Showcase & Workshop held on Nov. 4, 2003, it appears that at most five are represented in the most recent list of Form 477 filers. (The Showcase program is available at <http://www.fcc.gov/osp/rural-wisp/welcome.html>. The most recent list of Form 477 filers is available at <http://www.fcc.gov/web/jatd/comp.html>. Some facilities-based broadband providers, including some wireless ISPs, fall below the broadband reporting threshold but file voluntarily.) In addition, RoadStar Internet Services, Inc., a wireless ISP that serves western Loudoun County, Virginia, has approximately 150 broadband subscribers. See Griff Witte, "Bringing Broadband Over the Mountain," *Washington Post*, Sept. 15, 2003, at E1. In the course of the current Form 477 data collection, staff have on several occasions received phone calls from researchers and others who assert that the data collection understates the nationwide number of fiber optic connections to homes, including homes in rural areas served by municipalities and public utility districts, although several such entities do report

the few small facilities-based providers that currently file Form 477 on a voluntary basis find that only a few questions apply to their situations. This suggests that, as a practical matter, additional reporting burdens for many small providers would be small, which was not evident when the Commission initiated the Form 477 data collection.²³ We therefore seek comment on the benefits of the more complete picture of broadband deployment that would be achieved if all facilities-based providers were required to report broadband data, and request that parties identify with specificity any associated burdens. We encourage any party that argues that we should adopt a sampling methodology, as an alternative to eliminating the broadband reporting threshold, to provide a detailed and complete sample design.

11. Third, we seek comment on whether we should adopt a lower threshold for reporting local telephone competition data, and if so, what that threshold should be.²⁴ Commenters should address whether a specific lower threshold would yield an improved picture of local telephone service competition, particularly in less densely populated states, justify their proposed threshold, and identify with specificity any associated burdens

12. Fourth, we seek comment on whether we could modify our policies regarding publication of data without jeopardizing legitimate claims of confidentiality. In this Notice, we do not propose to change existing policy regarding the overall protection we afford Form 477 data in connection with competitively sensitive information.²⁵ Given the entry of competitive LECs, wireless providers, and others into local telephone service markets, the proliferating deployment of broadband services nationwide, and the dynamism of communications markets generally, however, we seek comment on whether historical aggregated information from our data collection remains competitively sensitive after the passage of time, such as a year or two. For example, aggregated data as of June 30, 2003 that we masked (by substituting an asterisk for the true value) in our most recent publications,²⁶ may not be considered competitively sensitive after June 30, 2005. We seek comment on whether a comparable report published after June 30, 2005 could include the true values of these aggregated June 30, 2003 data without causing competitive harm to any Form 477 filer.²⁷ If so, should our publication

²³ The Wireline Competition Bureau (then the Common Carrier Bureau) conducted a voluntary survey in 1998 and 1999 that provided an initial format for the Form 477, but participants were almost exclusively large carriers

²⁴ The current reporting threshold for local telephone competition data is 10,000 voice-grade equivalent lines (or wireless channels) that provide voice telephone service to end users in a state, or 10,000 mobile telephone service subscribers in a state. See n 10, *supra*

²⁵ *Data Gathering Order*, 15 FCC Rcd at 7758, para 87, 47 C.F.R. § 0.459(d). We continue to believe that filers should be permitted to submit Form 477 data under a claim of confidentiality. We would continue to treat such information as confidential pending receipt of petitions submitted pursuant to the Freedom of Information Act. Upon notification, filing parties would then be required to provide reasons why the Commission should continue to protect the submitted information. See 47 C.F.R. §§ 0.457-0.461. We also intend to continue releasing only aggregated information about broadband deployment in our published reports to protect against release of company-specific information directly or indirectly

²⁶ See, e.g., *High-Speed Services Report*. We also use asterisks to mask some of the more voluminous "miscellaneous data from FCC Form 477" that we make available at <http://www.fcc.gov/wcb/latd/comp.html> (e.g., Form 477 filers at the nationwide level; number of reporting broadband providers by Zip Code, number of reporting CLECs by Zip Code)

²⁷ We note, moreover, that when an item of aggregated data combines information from only a few filers, an informed party could "back out" a particular filer's specific data only by successfully bringing reliable outside information to bear

procedures be modified so that the maximum amount of non-competitively sensitive Form 477 information is made publicly available in a timely manner, for use by policymakers, academic researchers and industry analysts, and other members of the general public? Commenters should address whether this change in publication procedures would undermine companies' willingness to answer our broadband data requests fully and promptly, with a minimum of procedural challenges.

13 Fifth, we seek comment on whether we should modify any of our other policies regarding data use. In the *Data Gathering Order*, the Commission indicated that it intended to share state-specific Form 477 data, subject to appropriate conditions, with state commissions.²⁸ It noted that such sharing could advance useful regulatory review of developing local service competition and broadband deployment trends. This would serve the public interest generally, but would also assist this Commission particularly by encouraging additional expert review of the accuracy and completeness of submitted information and its use in our reports. To date, we have entered into ten arrangements with state agencies, all of which have agreed to our confidentiality requirements. We propose to continue such arrangements with state agencies in the future. We invite comment about the value of this program.²⁹

14 We seek comment on all the changes discussed in this Notice, including all specific changes set out in Appendix B. We also seek comment on our continuing use of reporting thresholds for both local telephone and broadband data. We are coordinating possible small business size standard issues with the U.S. Small Business Administration. We seek comment on ways by which we can limit burdens imposed on providers, prevent the dissemination of competitively-sensitive information, and limit our data collection, wherever possible, to information that providers routinely keep in the ordinary course of business or that is easily derived from their records. We look forward to working closely with all participants to minimize burdens wherever possible, particularly with regard to smaller providers that may have limited resources.

15 Finally, we intend to explore whether to conduct or commission a consumer survey to develop a better understanding of consumer adoption and usage of broadband services.³⁰ We welcome input on what questions should be included in such a survey.

²⁸ *Data Gathering Order*, 15 FCC Rcd at 7761-62, para. 95 n.241 (noting that state participants must be willing and able to treat commercial information according to our confidentiality rules and guidelines, and that where state laws afford less protection than federal FOIA laws, the higher federal standard will prevail).

²⁹ We remind interested parties that the Commission previously concluded that such data sharing comports with Commission rules governing protection of confidentially-submitted information. See *Data Gathering Order*, 15 FCC Rcd at 7761-62, para. 95. If commenters choose to address confidentiality concerns about data sharing with state agencies in this proceeding, we urge them to address such issues with specificity, including a detailed legal analysis.

³⁰ We note that the U.S. Small Business Administration recently funded a survey of small business telecommunications use and spending. See U.S. Small Business Administration, Office of Advocacy, "Small Business Use of Telecommunications Services Detailed in New Report" (March 2004), available at <http://www.sba.gov/advo/press/04-09.html>. The U.S. Department of Commerce has funded questions about household Internet, broadband, and computer connectivity through the U.S. Census Bureau's Current Population Survey. See, e.g., U.S. Department of Commerce, National Telecommunications and Information Administration and Economics and Statistics Administration, *A Nation Online: How Americans Are Expanding Their Use of the Internet* (February 2002), available at <http://www.ntia.doc.gov/ntiahome/dn/index.html>.

IV. ORDER ON RECONSIDERATION

16. Iowa Telecommunications Services, Inc. (Iowa Telecom), in a petition for reconsideration of the *Data Gathering Order*, asked the Commission to adopt annual statistical sampling for certain rural telephone companies in lieu of reporting Form 477 data.³¹ We deny the petition. Iowa Telecom has not raised materially new or persuasive arguments beyond those considered in the *Data Gathering Order*, nor has it alleged substantially changed circumstances to justify the requested relief.³² Parties wishing to revisit these arguments more generally may do so in the context of the Notice in WC Docket No. 04-141 we adopt today.

V. PROCEDURAL MATTERS

A. Ex Parte Presentations

17. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. See 47 C.F.R. §§ 1.1200 and 1.1206. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

B. Paperwork Reduction Act

18. As required by the Paperwork Reduction Act of 1995, we invite the general public and the Office of Management and Budget (OMB) to comment on the proposed information collection requirements contained in this Notice.³³ Public and Agency comments are due 60 days from date of publication of the Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of collection of information on respondents, including the use of automated techniques or other forms of information technology. In addition to filing comments with the Commission's Secretary, Marlene H. Dortch, a copy of any Paperwork Reduction Act (PRA) comments on the proposed information collection requirements contained in this Notice should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to Judith-B.Herman@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW, Washington, DC 20503, via the Internet to Kristy.L.LaLonde@omb.eop.gov, or by fax to (202) 395-5167.

³¹ See *Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings*, Public Notice, Report No. 2417 (Consumer Information Bureau, 2000). No comments were filed on Iowa Telecom's petition.

³² See 47 C.F.R. § 1.429. See also *Second Notice*, 16 FCC Rcd at 2077-78, para. 14. In the *Second Notice*, the Commission recognized that Iowa Telecom had not raised any materially new or persuasive arguments, but declined to formally act on the petition for reconsideration in light of the pending *Second Notice*.

³³ Paperwork Reduction Act of 1995, Pub. L. No. 104-13.

C. Filing of Comments and Reply Comments

19. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before thirty (30) days after publication of this Notice in the Federal Register. Interested parties may file reply comments on or before sixty (60) days after publication of this Notice in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.³⁴

20. Comments filed through ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

21. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

22. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All required filings must be addressed to the Commission's Secretary, Marlene H. Dortch, at the Office of the Secretary, Federal Communications Commission. Parties who choose to file by paper are requested to send two additional courtesy copies of their filing to the attention of Mikelle Morra, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW, Sixth Floor, Washington, DC 20554.

23. Regardless of whether parties choose to file electronically or by paper, parties must also file one copy of their filing with the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554 (see the preceding paragraph for alternative addresses for delivery by hand or messenger), telephone (202) 863-2893, facsimile (202) 863-2898), or via e-mail qualexint@aol.com. Comments filed in this proceeding may be downloaded from the Commission's ECFS web site. Those comments, as well as the full text of this document, are available for public inspection and copying during regular business hours at the FCC Reference

³⁴ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998)

Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC. They may also be purchased from the Commission's duplicating contractor, Qualex International.

24 Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules.³⁵ We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

D. Accessible Formats

25 Alternative formats (computer diskette, large print, audio recordings, and Braille) are available to persons with disabilities by contacting Brian Millan at (202) 418-7426 voice, (202) 418-7365 TTY, or brian.millan@fcc.gov.

E. Initial Regulatory Flexibility Analysis

26 As required by the Regulatory Flexibility Act (RFA),³⁶ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this Notice. The IRFA is set forth in Appendix A to this Notice. Written public comments on the IRFA must be filed in accordance with the filing deadlines for comments on the Notice, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.³⁷

F. Further Information

27 For further information regarding this proceeding, contact Ellen Burton, Assistant Chief, James Eisner, Senior Economist, or Thomas J. Beers, Deputy Chief, Industry Analysis and Technology Division, Wireline Competition Bureau, at (202) 418-0940. Information regarding this proceeding and others may also be found on the Commission's website at www.fcc.gov.

VI. ORDERING CLAUSES

28 Accordingly, IT IS ORDERED that, pursuant to sections 1-5, 10, 11, 201-205, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155, 160, 161, 201-205, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt, this NOTICE, with

³⁵ See 47 C.F.R. § 1.49.

³⁶ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

³⁷ 5 U.S.C. § 603(a).


all attachments, is ADOPTED

29. IT IS FURTHER ORDERED that, pursuant to sections 1-5, 10, 11, 201-205, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155, 160, 161, 201-205, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503, section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt, and sections 1.106 and 1.429 of the Commission's rules, 47 C.F.R §§ 1.106 and 1.429, the petition for reconsideration filed by Iowa Telecommunications Services, Inc. is DENIED.

30 IT IS FURTHER ORDERED that CC Docket No. 99-301 is TERMINATED.

31. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Marlene H. Dortch", is written over the printed name and title.

Marlene H Dortch
Secretary

APPENDIX A INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking in WC Docket No. 04-141 (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this Notice, which are set out in paragraph 16 of the Notice. The Commission will send a copy of this Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, this Notice and IRFA (or summaries thereof) will be published in the Federal Register.³

I. Need for, and Objectives of, the Proposed Action:

2. The Commission has initiated this Notice to seek comment about specific proposals to improve its Form 477 local competition and broadband data gathering program and to extend the program for five years beyond its currently designated sunset in March 2005. The Commission adopted the Form 477 in spring 2000 to help the Commission and the public understand the extent of local telephone service competition and broadband services deployment, which is important to the nation's economic, educational, and social well-being.⁴ The proposals in this Notice on which the Commission seeks comment attempt to further that goal while minimizing burdens on marketplace competitors and innovators. In particular, the Commission asks whether collecting more granular data from broadband service providers would more effectively support its study of broadband deployment pursuant to section 706 of the 1996 Act. The Commission also seeks to assist filers of local telephone data by clarifying certain current requirements.

II. Legal Basis:

3. The legal basis for the action as proposed for this rulemaking is contained in sections 1-5, 10, 11, 201-205, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155, 160, 161, 201-205, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503 and pursuant to section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt.

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 - 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717 (2000).

III. Description and Estimate of the Number of Small Entities to Which the Proposed Action May Apply:

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁵ To estimate the number of small entities that may be affected by the proposed rules, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction."⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.⁷ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.⁸

5. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report.⁹ The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,¹⁰ Paging,¹¹ and Cellular and Other Wireless Telecommunications.¹² Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

6. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a wired telecommunications carrier having 1,500 or fewer employees), and "is not dominant in its

⁵ 5 U.S.C. § 603(b)(3).

⁶ 5 U.S.C. § 601(6).

⁷ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

⁸ 15 U.S.C. § 632.

⁹ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 5.3 (August 2003) (*Trends in Telephone Service*).

¹⁰ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110 (changed from 513310 in October 2002).

¹¹ *Id.* § 121.201, NAICS code 517211 (changed from 513321 in October 2002).

¹² *Id.* § 121.201, NAICS code 517212 (changed from 513322 in October 2002).

field of operation.”¹³ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.¹⁴ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

7. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.¹⁵ According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.¹⁶ Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.¹⁷ Thus, under this size standard, the great majority of firms can be considered small.

8. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁸ According to Commission data,¹⁹ 1,337 carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

9. *Competitive Local Exchange Carriers (CLECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to “Other Local Exchange Carriers,” all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁰ According to Commission

¹³ 5 U.S.C. § 601(3).

¹⁴ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a), 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

¹⁵ 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

¹⁶ U.S. Census Bureau, 1997 Economic Census, Subject Series Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 513310 (issued October 2000).

¹⁷ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees, the largest category provided is “Firms with 1,000 employees or more.”

¹⁸ 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

¹⁹ *Trends in Telephone Service* at Table 5.3.

²⁰ 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

data,²¹ 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees.²² In addition, 51 carriers reported that they were "Other Local Exchange Carriers." Of the 51 "Other Local Exchange Carriers," an estimated 50 have 1,500 or fewer employees and one has more than 1,500 employees.²³ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

10. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁴ According to Commission data,²⁵ 261 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 261 companies, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees.²⁶ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and policies adopted herein.

11. *Cellular Licensees*. The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunication, which consists of all such firms having 1,500 or fewer employees.²⁷ According to Census bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.²⁸ Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.²⁹ Thus under this size standard, the majority of firms can be considered small.

12. *Broadband Personal Communications Service*. The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for

²¹ *Trends in Telephone Service* at Table 5.3

²² *Id.*

²³ *Id.*

²⁴ 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

²⁵ *Trends in Telephone Service* at Table 5.3

²⁶ *Id.*

²⁷ 13 C.F.R. § 121.201, NAICS code 517212 (changed from 513322 in Oct 2002).

²⁸ U.S. Census Bureau, 1997 Economic Census, Subject Series Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513322 (issued Oct. 2000).

²⁹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.³⁰ For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.³¹ These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.³² No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.³³ On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Based on this information, the Commission concludes that the number of small broadband PCS licenses will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission’s auction rules. Consequently, the Commission estimates that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

13. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.³⁴ A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards.³⁵ In

³⁰ See *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, Report and Order, 61 FR 33859 (July 1, 1996), see also 47 C.F.R. § 24.720(b).

³¹ *Id.*

³² See e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 59 FR 37566 (July 22, 1994).

³³ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997). See also *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, WT Docket No. 97-82, Second Report and Order, 62 FR 55348 (Oct. 24, 1997).

³⁴ *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, Docket No. ET 92-100, Docket No. PP 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 65 FR 35875 (June 6, 2000).

³⁵ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

14. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This standard provides that such a company is small if it employs no more than 1,500 persons.³⁶ According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.³⁷ Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.³⁸ If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard

15. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.³⁹ This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁴⁰ A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed

³⁶ 13 C.F.R. § 121.201, NAICS code 517212 (changed from 513322 in October 2002)

³⁷ U.S. Census Bureau, 1997 Economic Census, Subject Series Information, "Employment Size of Firms Subject to Federal Income Tax 1997," Table 5, NAICS code 513322 (issued Oct. 2000)

³⁸ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees, the largest category provided is "Firms with 1,000 employees or more."

³⁹ *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, at paras. 291-95 (1997) (*220 MHz Third Report and Order*)

⁴⁰ *Id.* at 11068-70, para. 291

\$3 million for the preceding three years. The SBA has approved these small business size standards.⁴¹ Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.⁴² In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.⁴³

16. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.⁴⁴ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).⁴⁵ The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," i.e., an entity employing no more than 1,500 persons.⁴⁶ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

17. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.⁴⁷ We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," i.e., an entity employing no more than 1,500 persons.⁴⁸ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

18. *Fixed Microwave Services.* Fixed microwave services include common carrier,⁴⁹

⁴¹ See letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

⁴² See generally Public Notice, "220 MHz Service Auction Closes," 14 FCC Red. 605 (1998).

⁴³ Public Notice, "Phase II 220 MHz Service Spectrum Auction Closes," 14 FCC Red. 1,218 (1999).

⁴⁴ The service is defined in § 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

⁴⁵ BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757 and 22.759.

⁴⁶ 13 C.F.R. § 121.201, NAICS code 517212 (changed from 513322 in October 2002).

⁴⁷ The service is defined in § 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

⁴⁸ 13 C.F.R. § 121.201, NAICS codes 517212 (changed from 513322 in October 2002).

⁴⁹ See 47 C.F.R. §§ 101 *et seq.* (formerly, Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

private operational-fixed,⁵⁰ and broadcast auxiliary radio services.⁵¹ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.⁵² The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

19. *Offshore Radiotelephone Service* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.⁵³ There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services.⁵⁴ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁵⁵

20. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business" is an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards.⁵⁶ The Commission auctioned geographic

⁵⁰ Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

⁵¹ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

⁵² 13 C.F.R. § 121.201, NAICS code 517212 (changed from 513322 in October 2002).

⁵³ This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 C.F.R. §§ 22.1001-22.1037.

⁵⁴ 13 C.F.R. § 121.201, NAICS code 517212 (changed from 513322 in October 2002).

⁵⁵ *Id.*

⁵⁶ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

21. *Satellite Services.* The SBA has developed a small business size standard for Satellite Telecommunications, which consists of all such firms having \$12.5 million or less in annual receipts.⁵⁷ According to Census Bureau data for 1997, in this category there was a total of 324 firms that operated for the entire year.⁵⁸ Of this total, 273 firms had annual receipts of under \$10 million, and an additional twenty-four firms had receipts of \$10 million to \$24,999,999.⁵⁹ Thus, under this size standard, the majority of firms can be considered small.

22. In addition to the estimates provided above, we consider certain additional entities that may be affected by the data collection from broadband service providers. Because section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, we anticipate that some broadband service providers will not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

23. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has defined a small business size standard for Cable and other Program Distribution, consisting of all such companies having annual receipts of no more than \$12.5 million.⁶⁰ According to Census Bureau data for 1997, there were 1,311 firms in the industry category Cable and Other Program Distribution, total, that operated for the entire year.⁶¹ Of this total, 1,180 firms had annual receipts of \$10 million or less, and an additional 52 firms had receipts of \$10 million or more but less than \$25 million.⁶² Thus, under this standard, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies proposed in the Notice.

24. *Cable System Operators (Rate Regulation Standard)* The Commission has developed, with SBA approval, its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.⁶³ Based on our most recent information, we estimate that there were 1,439

⁵⁷ 13 C.F.R. § 121.201, NAICS code 517410 (changed from 513340 in October 2002).

⁵⁸ U.S. Census Bureau, 1997 Economic Census, Subject Series Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 513340 (issued October 2000).

⁵⁹ *Id.*

⁶⁰ 13 C.F.R. § 121.201, NAICS code 517510.

⁶¹ U.S. Census Bureau, 1997 Economic Census, Subject Series Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4 (issued October 2000).

⁶² *Id.*

⁶³ 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. See Implementation of Sections of the Cable (continued)

cable operators that qualified as small cable companies at the end of 1995.⁶⁴ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. The Commission's rules define a "small system," for purposes of rate regulation, as a cable system with 15,000 or fewer subscribers.⁶⁵ The Commission does not request nor does the Commission collect information concerning cable systems serving 15,000 or fewer subscribers, and thus is unable to estimate, at this time, the number of small cable systems nationwide.

25 *Cable System Operators (Telecom Act Standard)* The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁶⁶ The Commission has determined that there are 68,500,000 subscribers in the United States.⁶⁷ Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.⁶⁸ Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450.⁶⁹ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

26. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).⁷⁰ In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had

(Continued from previous page)

Television Consumer Protection and Competition Act of 1992: Rate Regulation, *Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995)

⁶⁴ Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

⁶⁵ 47 C.F.R. § 76.901(c)

⁶⁶ 47 U.S.C. § 623(m)(2)

⁶⁷ Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, 17 FCC Rcd 1255 (2001) (*Eighth Annual Report*)

⁶⁸ 47 C.F.R. § 76.1403(b)

⁶⁹ Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995)

⁷⁰ *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593 at para. 7 (1995)

annual average gross revenues of less than \$40 million in the previous three calendar years.⁷¹ The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$12.5 million or less in annual receipts.⁷² According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.⁷³ Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.⁷⁴ Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

27. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.⁷⁵ The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁷⁶ An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁷⁷ The SBA has approved these small business size standards in the context of LMDS auctions.⁷⁸ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned

⁷¹ 47 C.F.R. § 21.961(b)(1).

⁷² 13 C.F.R. § 121.201, NAICS code 517510 (changed from 513220 in October 2002).

⁷³ U.S. Census Bureau, 1997 Economic Census, Subject Series Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517510 (issued October 2000).

⁷⁴ In addition, the term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

⁷⁵ See *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, and to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, Second Report and Order, 12 FCC Rcd 12545 (1997).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

28 *Electric Power Generation, Transmission and Distribution.* This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer. The SBA has developed a small business size standard for the category of *Electric Power Generation, Transmission and Distribution*. Under that standard, a firm is small if, including its affiliates, its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.⁷⁹ According to Census Bureau data for 1997, there were 1,519 firms in this category that operated for the entire year.⁸⁰ Census data do not track electric output and we have not determined how many of these firms fit the SBA definition for small, with fewer than 4 million megawatt hours of electric output. Consequently, the Commission estimates that all 1,519 firms may be considered small by the SBA definition.

IV. Description of Proposed Reporting, Recordkeeping, and Other Compliance Requirements:

29 The Notice proposes to extend the data collection for five years and to adopt changes to the Form 477 that will affect reporting, recordkeeping, and other compliance requirements. These changes are described below. Additionally, the Notice seeks comment on (1) requiring filers to report the *number* of high-speed connections in service, by technology and by speed, in particular Zip Codes, (2) requiring more – or *all* – facilities-based providers to report information about high-speed connections on Form 477, and (3) requiring more carriers to report local telephone competition data.⁸¹

30. The proposed changes to the Form 477 would

- Require filers reporting high-speed cable modem connections also to report their best estimate of the *percentage* of mass-market end-user premises in the filer's service area, in that state, to which high-speed cable modem service is available *over the filer's own facilities*.⁸²

⁷⁹ 13 C.F.R. § 121.201, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122

⁸⁰ U.S. Census Bureau, 1997 Economic Census, Subject Series Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122

⁸¹ In the Notice, the terms "high-speed services" and "broadband services" each refer to connections that deliver an information carrying capacity in excess of 200 kilobits per second (kbps) in at least one direction.

⁸² For purposes of the Notice, "mass market" includes residential end users and also small businesses to the extent they purchase high-speed services that are primarily designed for, or marketed to, residential end users.

- Similarly, require filers reporting high-speed DSL connections also to report their best estimate of the *percentage* of mass-market end-user premises in the filer's service area, in that state, to which high-speed DSL service is available *over the filer's own facilities*.
- Require filers to report the percentage of connections that have information transfer rates exceeding 200 kilobits per second (kbps) in both directions and rates in the faster direction that are, respectively: (1) greater than 200 kbps and less than 2.5 megabits per second (mbps); (2) greater than or equal to 2.5 mbps and less than 10 mbps; (3) greater than or equal to 10 mbps and less than 25 mbps; (4) greater than or equal to 25 mbps and less than 100 mbps; and (5) greater than or equal to 100 mbps. (Currently, filers report the percentage of high-speed connections that are faster than 2 mbps in both directions.)
- In place of the current requirement that all filers report high-speed connections over "other traditional wireline including symmetric xDSL technology" at the end-user location, require filers to report high-speed connections separately for "symmetric xDSL" and for "other traditional wireline" (e.g., T-1/DS1) technologies.
- Require filers to report Zip Code lists separately for asymmetric xDSL, symmetric xDSL, cable modem, satellite, terrestrial wireless, electric power line, and (as a single category) other technologies including fiber to the home. (Currently, filers report a single list of Zip Codes in which the filer has at least one subscriber to high-speed service without indicating the type of technology used)
- Require filers to estimate the percentage of reported high-speed connections that have information transfer rates exceeding 200 kbps in both directions, and that are used by residential and small business end users.
- Require reporting competitive LECs explicitly to distinguish their use of unbundled network element (UNE) loops from their use of the UNE-Platform,⁸³ and explicitly to report their resale of other carriers' services. (Currently, competitive LECs report their use of all types of UNEs together, and competitive LECs' resale of other carriers' retail services must be estimated, as a residual, from other data they report.)
- Require providers of local telephone service to report the extent to which they are also the end user's default interstate long distance carrier.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:

31 The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives. (1) the

⁸³ The UNE-Platform is the combination of loop UNE, switching UNE, and transport UNE.

establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁸⁴

32. The Notice seeks comment, in light of four year's experience since the adoption of the reporting program, on ways that the Commission might improve this data gathering effort. The Notice asks whether the collection of more granular data would enhance the Commission's ability to understand the status and degree of broadband deployment pursuant to section 706 of the 1996 Act. At the same time, the Notice seeks comment on ways by which the Commission can limit burdens imposed on providers, particularly with regard to smaller providers that may have limited resources, prevent the dissemination of competitively-sensitive information, and limit the data collection, wherever possible, to information that providers routinely keep in the ordinary course of business of that is easily derived from their records.⁸⁵ The proposed changes to the Form 477 set forth in the Notice would minimize additional reporting burden by (1) focusing direct questions about service availability on the two major mass-market high-speed services and (2) allowing providers of those services to estimate state-level service availability using methodologies they may already employ to inform the investment community about system-wide service availability. As a practical matter, any additional reporting burdens on small entities should be minimal. The few small facilities-based broadband service providers that currently file Form 477 on a voluntary basis find that only a few questions apply to their situation.⁸⁶

33. The Notice asks whether eliminating – or lowering – the reporting threshold for broadband data (*i.e.*, at least 250 high-speed lines (or wireless channels) in a state connecting end users to the Internet) would yield significantly improved data about broadband deployment, particularly in rural areas, and requests that parties identify with specificity any associated burdens.⁸⁷ The Notice similarly asks about the benefits and specific associated burdens of lowering the reporting threshold for local telephone competition data (*i.e.*, at least 10,000 local telephone service lines (or wireless channels), or at least 10,000 mobile telephone service subscribers, in a state)⁸⁸ At the same time, the Notice expressly states the Commission's desire and intention to work closely with service providers, including small entities, to minimize burdens wherever possible, particularly for smaller providers that may have limited resources.⁸⁹

VI. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules:

34. The current FCC Form 477 and the FCC Form 325 (Annual Report of Cable Systems) collect data on cable modem and cable-telephony service subscribers. The Form 325,

⁸⁴ 5 U.S.C. § 603(c)

⁸⁵ See Notice, para 14

⁸⁶ See Notice, para 10

⁸⁷ *Id.*

⁸⁸ See Notice, para 11

⁸⁹ See Notice, para 14

however, focuses on cable physical system (PSID) data. A Form 325 is required from each PSID that has at least 20,000 subscribers and from a random sample of PSIDs that have fewer than 20,000 subscribers. The data are associated on the form with other aspects of physical system operation to give a complete picture of related aspects of PSID operation. By contrast, the requirement to report cable modem service connections on Form 477 applies to holding companies whose subsidiaries and affiliates provide, in total, at least 250 high-speed connections to end users in a particular state, and the requirement to report cable-telephony lines applies when the holding company provides at least 10,000 local telephone service lines in a particular state. Form 325 collects information as of June 30 of each year. Form 477 collects data as of June 30 and December 31. This Notice seeks comment on whether all facilities-based providers should be required to report information about high-speed connections on Form 477, which, for its intended purposes, focuses on and is analyzed on a holding company rather than PSID basis.